

6-29-07

trw
AF/\$

Attorney Docket No.: B8/B8 CIP DIV4



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Walter C. Fiers
Application No. : 08/452,658 Confirmation No. : 5499
Filed : May 25, 1995
For : DNA SEQUENCES, RECOMBINANT DNA
MOLECULES AND PROCESSES FOR PRODUCING
HUMAN FIBROBLAST INTERFERON-LIKE
POLYPEPTIDES
Group Art Unit : 1634
Examiner : James Martinell

New York, New York
June 27, 2007

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**PETITION FOR EXTENSION OF TIME
UNDER 37 C.F.R. § 1.136(b)**

Sir:

Pursuant to 37 C.F.R. § 1.136(b), applicant respectfully petitions for a one month extension of time to request an Oral Hearing before the Board of Patent Appeals and Interferences, in support of applicant's Appeal from the final rejection of claims 31 and 34. This Petition for Extension of Time Under 37 C.F.R. § 1.136(b) (Petition) is filed concurrently with a Request for Oral Hearing Under 37 C.F.R. § 1.194(b), and payment of the required fee.

In this case, applicant believes there is good and sufficient cause to extend the time period to Request an Oral Hearing. Several times during, the past two months,

applicant has been in contact with both Examiner Martinell as well as a member of the Board of Patent Appeals and Interferences (the "Board") regarding the status of this appeal and the fact that applicant understands and believes that other parties, including party Sugano, the patentee of the documents underlying the pending 102(g) rejections, are now involved in at least two interferences to contest the priority of invention in the context of the production of IFN- β . In its telephone discussions with Examiner Martinell, applicant explained that fairness dictated that the Sugano patents be cited or not cited in the same way against applicant and against the other party in the two interferences, whom applicant believes has a later effective filing date than this application. Examiner Martinell said he would speak to the Board to determine what to do -- continue the appeal, drop the rejection and declares an interference, or resume prosecution. Applicant also spoke to the Board and explained the situation. Thinking that these conversation would possibly moot the appeal and permit applicant to join the interferences, applicant waited to file its Request for Oral Hearing. Having heard nothing from the Examiner or the Board, applicant now request Oral Hearing to address the pending 102(g) rejections.

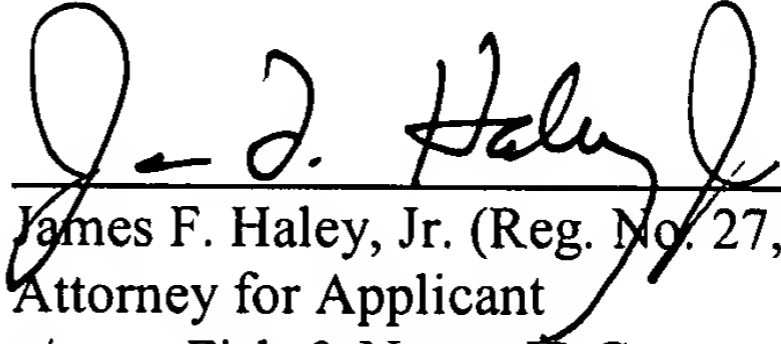
Furthermore, as Examiner Martinell has said to applicant his application of 102(g) -- not interference estoppel -- from a priority decision in a prior interference to finally reject claim 31 and 34 presents a novel question of law. Applicant believes that such question would be best resolved at a full Oral Hearing before the Board.

For both of the above reasons, applicant requests that the two-month period for filing a Request for Oral Hearing be extended for the reasonable time period of one additional month from the March 27, 2007 date of the Second Examiner's Answer.

The Director is hereby authorized to charge (1) \$120 in payment of the one-month extension of time fee; (2) \$200 in payment of the petition fee set forth in §

1.17(g), for review of a request for extension of time when the provisions of § 1.136(a) are not available; (3) \$1000.00 in payment of the fee set forth in § 41.20(b)(3) for a written request for an oral hearing; and (4) any additional fees that may be due in connection with this Petition (or credit any overpayment of the same), to Deposit Account No. 06-1075 (Order No. 000441-0031). A duplicate copy of this Petition is enclosed.

Respectfully submitted,


James F. Haley, Jr. (Reg. No. 27,794)
Attorney for Applicant
c/o Fish & Neave IP Group
ROPES & GRAY LLP
Customer No. 1473
1211 Avenue of the Americas
New York, NY 10036-8701
Tel.: (212) 596-9000
Fax : (212) 596-9090